must be proved by the party seeking the dismissal." ROOD, GARNISHMENT, § 284. *Orton* v. *Noonan,* 27 Wis. 572; *German-American Bank* v. *Butler-Mueller Co.,* 87 Wis. 467, 58 N. W. 746. The proper practice is for the defendant or garnishee to make and file in court affidavits of the facts upon which he depends to have the proceedings dismissed, and then to move the court to dismiss the garnishment. *Orton* v. *Noonan,* 27 Wis. 572. In the main case the counsel for the plaintiff argued that, since garnishment proceedings are statutory and in derogation of the common law, the statute must be strictly followed in every particular, and since no provision existed providing a procedure where the averments in the garnishment affidavit were controverted, the court was without jurisdiction to try or determine the issue. The court held, however, that inasmuch as proceedings in garnishment are statutory, authority for their issuance must be found in the statute, and in a case where the defendant has no property subject to execution, garnishment is not authorized, and the issuance of the affidavit or other process is an abuse of process, which any court has inherent power to correct, and that the dismissal of the garnishment is merely a remedy for the abuse of process in obtaining it. *Thoen* v. *Harnstrom,* 98 Wis. 231, 73 N. W. 1011; *Chanute* v. *Martin,* 25 Ill. 63; *Noble* v. *Bates,* 44 Mich. 193. A recent case holding that garnishment may be discharged when the writ is illegally and improperly issued is *Sully* v. *Bushell,* 50 Wash. 389, 97 Pac. 445.

INFANTS—TORTS—BREACH OF WARRANTY.—Defendant, an infant, sold the plaintiff a horse with a warranty of soundness which he knew was false. Defendant refused to take back the horse or return the purchase price, for which plaintiff then sued. *Held,* the pleadings alleged only a breach of warranty, for which an infant is not liable. *Collins* v. *Gifford* (N. Y. 1911), 96 N. E. 721.

With the exception of one jurisdiction, see *Word* v. *Vance,* 1 Nott & McCord 197, 9 Am. Dec. 683, the courts seem to agree in holding infancy a good defense for false warranty of property sold. BURDICK, TORTS, (Ed. 2), p. 122; note 57 L. R. A. 680; KALES, CASES, PERSONS, p. 323. This is but a necessary application of the general rule of non-liability of infants for their contracts. *West* v. *Moore,* 14 Vt. 447. The distinction is nice between false representations constituting a warranty and misleading statements of age to induce the making of a contract. In the latter case the doctrine of estoppel frequently is applied in equity. See 9 MICH. L. REV. 72. The decision in the leading case follows closely the language in *Studwell* v. *Shapter,* 54 N. Y. 249, and also distinguishes *Hewitt* v. *Warren,* 10 Hun 560, the *obiter dictum* of which has sometimes led to confuse a proper conception of the New York doctrine. Yet the exact position of the New York court seems not rigidly or clearly established even by this opinion.

INTERSTATE COMMERCE — STREET RAILWAYS. — The Interstate Commerce Commission regulated certain rates on the interstate passenger traffic of plaintiff, which is an electric interurban street railroad company carrying passengers in Omaha, Nebraska, in Council Bluffs, Iowa, and between those cities. The company objected to the regulation on the ground that the Commission had no jurisdiction, because the Interstate Commerce Act of 1887, and its subse-

quent amendments, do not include electric street railroads in their scope. *Held,* that the act being designed to regulate the vast interstate transportation business of the country, was not to be narrowly interpreted; that it did include street railroads doing an interstate business; that consequently, the Commission had jurisdiction to establish the rates objected to. *Omaha & C. B. St. Ry. Co. et al.* v. *Interstate Commerce Commission* (United States, Intervener) (Commerce Court, 1911), 191 Fed. 40.

Certain State courts have held that inasmuch as street railways and commercial railways are classified separately in statutes by the legislatures, that it must be taken to indicate that they are to be considered under different heads. *Board of R. R. Com.* v. *Market St. Ry. Co.,* 132 Cal. 677, 64 Pac. 1065; *Sams* v. *St. Louis etc. Ry.,* 174 Mo. 53, 73 S. W. 686, 61 L. R. A. 475. *Contra, Savannah T. & Isle of Hope Ry.* v. *Williams,* 117 Ga. 414, 61 L. R. A. 249 and notes; *Gyger* v. *Phila. etc. Ry. Co.,* 136 Pa. 96, 104; *Chicago* v. *Evans,* 24 Ill. 52. The court refused to apply this reasoning to the federal act. It followed the conclusions of the Commission that street railways were included in the Act. *Willson* v. *Rock Creek Ry. Co.,* 7 I. C. C. Rep. 83; JUDSON, INTERSTATE COMMERCE, 146-9. As expressed by Chief Justice WHITE, in *Employers' Liability Cases,* 207 U. S. 463, 497, "The act extends to every individual or corporation who may be engaged in interstate commerce as a common carrier." If then the Interstate Commerce Act includes street railways, the fact that this one was created under the street railway act of Nebraska and not under the commercial railway act, is immaterial. State legislation can neither limit nor preclude the granting of such power by Congress. *Cooley* v. *Port Wardens,* 12 How. 299. No State can regulate interstate railroad passenger rates. *Wabash, St. Louis etc. Ry. Co.* v. *Illinois,* 118 U. S. 557, 30 L. Ed. 244. Consequently if the Commission cannot do so under the Interstate Commerce Act, then such rates are uncontrolled. This same reasoning applies to interstate *street* railways with equal force. Merely because street railways are not mentioned, it cannot be maintained that they are not to be included. As expressed by the court on page 47, and here we have the fundamental reason for the decision, "A statute of the scope of the Interstate Commerce Act, designed to regulate the vast interstate transportation business of the country, is not to be narrowly interpreted—any more than the Constitution—in accordance with the economic or physical conditions prevailing at the time of its adoption." The decision presents the commendable broad type of construction shown in the constitutional construction of such recognized authorities as *Crandall* v. *Nevada,* 6 Wall 35 and *Pensacola Tel. Co.* v. *West. U. Tel. Co.,* 96 U. S. 1.

LANDLORD AND TENANT—LEASE OF SALOON AS AFFECTED BY PROHIBITORY LAW.—Plaintiff leased to defendant a building for a term of years "to be occupied for the purpose of operating and conducting a retail liquor business and saloon." Before expiration of the term the county in which the building was situated adopted local option in pursuance to a statute that was enacted prior to the execution of the lease. *Held,* that the adoption of local option did not cancel the lease for the balance of the term; that the purpose stated in the lease was permissive rather than restrictive and was not a warranty